

JS 440 SDNY  
REV. 12/2005

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required by the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS ANTHONY SPINALE

DEFENDANTS LINDSAY MITCHELL and DANIEL FAVALE

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Linda Strumpf, Esq., Lauren E. Moss, of Counsel, 2 West Road, South Salem, NY 10590, 212-566-6800

ATTORNEYS (IF KNOWN)

Carolina A. Fornos, AUSA, United States Attorney's Office, SDNY, 86 Chambers Street, NY, NY 10007, 212-637-2740

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Defamation and Denial of Inspection Services against Inspectors of the United States Department of Agriculture

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

## CONTRACT

- [ ] 110 INSURANCE  
[ ] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE INSTRUMENT  
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
[ ] 151 MEDICARE ACT  
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)  
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS  
[ ] 160 STOCKHOLDERS SUITS  
[ ] 190 OTHER CONTRACT  
[ ] 195 CONTRACT PRODUCT LIABILITY  
[ ] 196 FRANCHISE

## PERSONAL INJURY

- [ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT LIABILITY  
[ ] 320 ASSAULT, LIBEL & SLANDER  
[ ] 330 FEDERAL EMPLOYERS' LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY  
[x] 360 OTHER PERSONAL INJURY

## PERSONAL INJURY

- [ ] 362 PERSONAL INJURY - MED MALPRACTICE  
[ ] 365 PERSONAL INJURY PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

## PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING  
[ ] 380 OTHER PERSONAL PROPERTY DAMAGE  
[ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

## FORFEITURE/PENALTY

- [ ] 610 AGRICULTURE  
[ ] 620 FOOD & DRUG  
[ ] 625 DRUG RELATED SEIZURE OF PROPERTY  
[ ] 630 LIQUOR LAWS  
[ ] 640 RR & TRUCK  
[ ] 650 AIRLINE REGS  
[ ] 660 OCCUPATIONAL SAFETY/HEALTH  
[ ] 690 OTHER

## LABOR

- [ ] 710 FAIR LABOR STANDARDS ACT  
[ ] 720 LABOR/MGMT RELATIONS  
[ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT  
[ ] 740 RAILWAY LABOR ACT  
[ ] 790 OTHER LABOR LITIGATION  
[ ] 791 EMPL RET INC SECURITY ACT

## BANKRUPTCY

- [ ] 422 APPEAL  
28 USC 158  
[ ] 423 WITHDRAWAL  
28 USC 157

## PROPERTY RIGHTS

- [ ] 820 COPYRIGHTS  
[ ] 830 PATENT  
[ ] 840 TRADEMARK

## SOCIAL SECURITY

- [ ] 861 MIA (1395FF)  
[ ] 862 BLACK LUNG (923)  
[ ] 863 DIWC (405(g))  
[ ] 863 DIWW (405(g))  
[ ] 864 SSID TITLE XVI  
[ ] 865 RSI (405(g))

## FEDERAL TAX SUITS

- [ ] 870 TAXES  
[ ] 871 IRS-THIRD PARTY  
20 USC 7609

## OTHER STATUTES

- [ ] 400 STATE REAPPORTMENT  
[ ] 410 ANTITRUST  
[ ] 430 BANKS & BANKING  
[ ] 450 COMMERCE/ICC RATES/ETC  
[ ] 460 DEPORTATION  
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)  
[ ] 480 CONSUMER CREDIT  
[ ] 490 CABLE/SATELLITE TV  
[ ] 810 SELECTIVE SERVICE  
[ ] 850 SECURITIES/COMMODITIES/EXCHANGE  
[ ] 875 CUSTOMER CHALLENGE  
12 USC 3410  
[ ] 891 AGRICULTURE ACTS  
[ ] 892 ECONOMIC STABILIZATION ACT  
[ ] 893 ENVIRONMENTAL MATTERS  
[ ] 894 ENERGY ALLOCATION ACT  
[ ] 895 FREEDOM OF INFORMATION ACT  
[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE  
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES  
[ ] 890 OTHER STATUTORY ACTIONS

## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

- [ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING ACCOMMODATIONS  
[ ] 444 WELFARE  
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
[ ] 446 AMERICANS WITH DISABILITIES - OTHER  
[ ] 440 OTHER CIVIL RIGHTS

## PRISONER PETITIONS

- [ ] 510 MOTIONS TO VACATE SENTENCE  
28 USC 2255  
[ ] 530 HABEAS CORPUS  
[ ] 535 DEATH PENALTY  
[ ] 540 MANDAMUS & OTHER  
[ ] 550 CIVIL RIGHTS  
[ ] 555 PRISON CONDITION

## REAL PROPERTY

- [ ] 210 LAND CONDEMNATION  
[ ] 220 FORECLOSURE  
[ ] 230 RENT LEASE & EJECTMENT  
[ ] 240 TORTS TO LAND  
[ ] 246 TORT PRODUCT LIABILITY  
[ ] 290 ALL OTHER REAL PROPERTY

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☒ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]	[ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]	[ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]	[ ]
CITIZEN OF ANOTHER STATE	[ ]	[ ]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]	[ ]	FOREIGN NATION	[ ]	[ ]

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Anthony Spinale  
 266-268 New York City Terminal Market  
 Bronx, New York 10474

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Lindsay Mitchell and Daniel Favale  
 c/o United States Department of Agriculture - AMS - F&V - Hunts Point Office  
 465 Row C NYC Terminal Market  
 Bronx, NY 10474

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  
(DO NOT check either box if this a PRISONER PETITION.)

☐ WHITE PLAINS☒ FOLEY SQUARE

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

[x] YES (DATE ADMITTED Mo. 01 Yr. 2002)

Attorney Bar Code # 6689

RECEIPT #

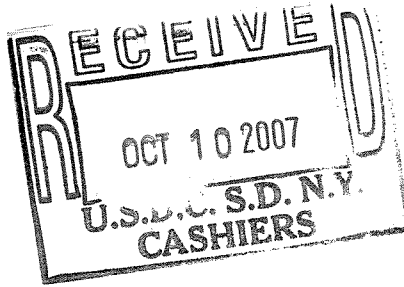
Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
By: CAROLINA A. FORNOS  
Assistant United States Attorney  
86 Chambers Street  
New York, New York 10007  
Tel. No.: (212) 637-2740  
Fax No.: (212) 637-2702



COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANTHONY SPINALE,

Plaintiff,

v.

LINDSAY MITCHELL and DANIEL  
FAVALE,

Defendants.

JUDGE McMAHON

07 CIV 8760

ECF

NOTICE OF REMOVAL

07 Civ. \_\_\_\_\_

from the Supreme Court of the State of  
New York, County of Bronx  
Index No. 20180-07

Defendants Lindsay Mitchell and Daniel Favale, Inspectors with the United States Department of Agriculture ("Defendants"), by their attorney, MICHAEL J. GARCIA, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about August 31, 2007, Plaintiff Anthony Spinale ("Plaintiff") filed a Summons and Complaint in the Supreme Court of the State of New York, County of Bronx, Index No. 20180-07, against Lindsay Mitchell and Daniel Favale. A true and correct copy of the Summons and Complaint are attached hereto as Exhibit 1.
2. Plaintiff's Complaint seeks judgment in the amount of \$500,000 for the alleged defamation and denial of inspection services by Defendants.

3. 28 U.S.C. § 1442(a)(1) provides, in pertinent part, that a civil action commenced in State court against the United States or any agency thereof or any officer of the United States or any agency thereof, “may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending.” 28 U.S.C. § 1442(a)(1). Because Lindsay Mitchell and Daniel Favale are inspectors with the United States Department of Agriculture, an agency of the United States, this action should be heard by this Court pursuant to 28 U.S.C. § 1442(a)(1).


4. Removal pursuant to 28 U.S.C. § 1442(a)(1) is timely under 28 U.S.C. § 1446(b), as Section 1446(b) authorizes removal of a civil action or proceeding within thirty days of proper service of process in an action. Removal is timely as Plaintiff has not properly served the United States, or the Defendants, in this action.

5. The submission of this notice of removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Defendants. This Office makes a limited appearance on behalf of the Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to the Defendants, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York  
October 10, 2007

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney  
Southern District of New York

  
By: CAROLINA A. FORNOS  
Assistant United States Attorney  
86 Chambers Street  
New York, New York 10007  
Tel.: (212) 637-2740  
Fax: (212) 637-2702

TO: Linda Strumpf, Esq.  
Lauren E. Moss, of Counsel  
Attorneys for Plaintiff  
2 West Road  
South Salem, NY 10590

## **EXHIBIT 1**

Supreme Court of the State of New York  
County of Bronx

-----X  
Anthony Spinale

Plaintiff,

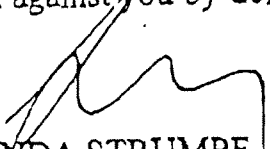
-against-

Lindsay Mitchell and Daniel Favale  
Defendants

-----X  
To the above named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 29 2007

  
LINDA STRUMPF, ESQ.  
LAUREN E. MOSS, OF COUNSEL  
Attorneys for Plaintiff  
2 West Road  
South Salem, NY 10590  
(212) 566-6800  
Our File No. 65140

Defendants' Address:  
Lindsay Mitchell and Daniel Favale  
C/O USDA - AMS - F&V - Hunts Point Office  
465 Row C NYC Terminal Market  
Bronx, NY 10474

Index No. 80180-07

Date Filed: 8/31/07

SUMMONS

Defendants' Principal  
place of business:  
465 NYC Terminal Market  
Bronx, NY 10474

The basis of the venue  
designated is:  
Defendants' Place of Business

Supreme Court of the State of New York  
County of Bronx

-----X  
Anthony Spinale

Index No.

20180-07

Plaintiff,

COMPLAINT

-against-

Lindsay Mitchell and Daniel Favale

Defendants,  
-----X

Plaintiff, Anthony Spinale, by his attorneys, Linda Strumpf, and Lauren E. Moss, Of Counsel, accusing the defendants, upon information and belief, alleges the following:

1. That at all times hereinafter mentioned the Plaintiff, Anthony Spinale, was an advisor for Mr. Sprout located in the County of Bronx, City and State of New York; Mr. Spinale has been associated with Mr. Sprout in that location for 17 years.
2. Prior to the utterance of the false and defamatory accusations made by Lindsay Mitchell and Daniel Favale hereinafter set forth, Anthony Spinale has always borne an excellent business reputation.
3. That Plaintiff has received many inspections from numerous inspectors over the past 50 years with only one complaint made regarding a dog.
4. On or about July 31, 2007, Lindsay Mitchell and Daniel Favale maliciously lied to Robert C. Keeney and probably Cathy Hance, alleging "Mr. Spinale



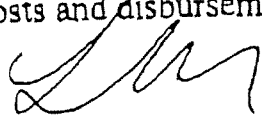
has allowed a dog to roam freely in the area where inspectors are performing their duties which interferes with the inspection services. In addition to the presence of the dog, the type of conduct includes, but is not limited to, Mr. Spinale, his employees or agents making derogatory comments to inspectors, throwing objects at inspectors, constant verbal comments that interfere with the inspector, and requests for inspectors to do actions outside their job duties." The defendants made these verbal statements after conducting an inspection on July 31, 2007 at the platform of Mr. Sprout Inc. located at 400-1-2 Row D. Said inspection was on video surveillance showing the inspection performed from start to finish, which is positive proof that the statements made by defendants are slanderous and outright vicious lies.

5. Mr. Spinale has no employees and the above statement is false. Employees mentioned above are all employed by Slow Pack, Inc.
6. That the statements made were false and defamatory, were known to the Defendants to be false and defamatory, and were verbally, willfully and maliciously passed on to Mr. Keeney and possibly Cathy Hance with the intent to damage the Plaintiff's good name and reputation which caused monetary losses. These allegations were made because of published announcements by Mr. Spinale regarding the USDA's past and present

- [illegible]

10. Plaintiff suffered damages in the sum of five hundred thousand (\$500,000.00) dollars, as well as monetary losses in a sum yet to be determined.

WHEREFORE, Plaintiff demands judgment against Defendants for the relief requested as set forth above, reinstatement of inspection services plus attorney's fees together with the costs and disbursements of this action.



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LINDA STRUMPF, ESQ.  
LAUREN E. MOSS, OF COUNSEL  
Attorneys for Plaintiff  
2 West Road  
South Salem, NY 10590  
(212) 566-6800  
Our File No. 65140

Spinale v. Mitchell  
07 Civ. \_\_\_\_  
Index No. 20180-07

CERTIFICATE OF SERVICE

I, Carolina A. Fornos, an Assistant United States Attorney for the Southern District of New York, hereby certify that on October 10, 2007, I caused a copy of the foregoing Notice of Removal, to be served upon the following by Federal Express, delivery charges pre-paid:

Linda Strumpf, Esq.  
Lauren E. Moss, of Counsel  
Attorneys for Plaintiff  
2 West Road  
South Salem, NY 10590

Dated: New York, New York  
October 10, 2007

  
\_\_\_\_\_  
CAROLINA A. FORNOS  
Assistant United States Attorney